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REMARKS

Claims 1-30 are presently pending in the case. Claims 1, 14, 19, 24 and 28 have been amended. Claims 27 and 31 have been cancelled. The new claims are supported by the specification and claims as originally filed.

Reconsideration of the present case in view of the above amendments and the remarks herein is requested.

Allowable Claims

Applicant acknowledges with appreciation the Examiner's indication that dependent claims 10-12, 26, 29 and 30 contain allowable subject matter. Applicant has not written these claims in independent form since the independent claims are allowable over the prior art, as described below.

Claim rejections under 35 USC 102

The Examiner rejected claims 1-9 and 13-23 under 35 USC 102(e) as being anticipated by US Patent 6,892,728 to Helgesson et al (hereinafter Helgesson et al). The rejection is traversed.

Helgesson does not anticipate claims 1-9 and 13-23. To sustain a section 102 rejection, the reference relied upon, must disclose each and every element of the claimed invention. Non-disclosure of a single element of the claim negates anticipation. Claim 1, for example, is to a handheld aerosolization apparatus comprising, inter alia, an end section associated with a housing, the end section sized and shaped to be received in a user's mouth or nose so that a user may inhale through the end section to aerosolize the pharmaceutical formulation and to inhale aerosolized pharmaceutical formulation that has exited the receptacle. The Helgesson et al device does not operate in this manner. Instead, the Helgesson et al device aerosolizes the pharmaceutical formulation through the actuation of a dispersion and suction chamber (see elements 18 and 19). The pharmaceutical formulation is not aerosolized from the receptacle by using the user's inhalation. It is respectfully submitted that this positively recited feature is absent in the teachings of Helgesson et al, thereby precluding a section 102 rejection.

because each and every element of the claim is not taught by the cited reference. Thus, the Examiner is respectfully requested to reconsider the language of claim 1 and withdraw the rejection thereunder.

Independent claims 14 and 19 have been amended to include similar limitations and likewise distinguish Helgesson et al. The claims depending from claims 1, 14, and 19 are also not anticipated by Helgesson et al.

It is respectfully requested that the rejections of claims 1-9 and 13-23 based on Helgesson et al be withdrawn.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 24, 25, 28, 29 and 31 under 35 USC 103(a) as being unpatentable over Helgesson et al. The rejection is traversed.

Helgesson et al does not render independent claims 24 and 28 unpatentable. Both claims 24 and 28 recite the step of "aerosolizing the pharmaceutical formulation by using the user's inhalation to cause air to flow through the chamber." As discussed above, this feature is not present in Helgesson et al. In addition, this feature is not suggested by Helgesson et al and is specifically taught away from in that the invention of Helgesson et al is for the purpose of preventing the need for user-inhalation actuation. Accordingly, one of ordinary skill in the art would not have found it obvious to modify Helgesson et al in a manner that would arrive at Applicant's claimed invention. Thus, claims 24 and 28 and the claims depending therefrom are not rendered obvious by Helgesson.


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Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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